AIRLINES – SINGLE SALES FACTOR APPORTIONMENT SPECIAL REGULATION 1A

The following special regulations are established in respect to the allocation and apportionment of income for airlines.

- 1) Single Sales Factor Apportionment. For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to subsection a) and apportion its business income using the sales factor set forth in subsection d), below. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009
 - a) In General. An airline that has income from sources both within and without Colorado shall determine income in accordance with this regulation. Income shall first be categorized as to "business" or "nonbusiness" income pursuant to regulation 39-22-303.5.1A. Nonbusiness income will be directly allocated to specific states in accordance with §39-22-303.5 C.R.S. Business income will be apportioned to those states in which business is conducted based on the apportionment factor(s) as set forth in this regulation.

b) **Definitions**:

- i) "Business and Nonbusiness Income." For definitions and rules for determining business and nonbusiness income, see Regulation 39-22-303.5.1A.
- ii) "Value" of owned real and tangible personal property shall mean its original cost.
- "Cost of aircraft by type" means the average original cost or value of aircraft by type that are ready for flight.
- iv) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property.
- v) "Average value" of the property means the amount determined by averaging the values at the beginning and ending of the income year, but the department may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property.
- vi) The "*value*" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate.
- vii) "Net annual rental rate" means the annual rental rate paid by the taxpayer.
- viii) "*Property used during the income year*" includes property which is available for use in the taxpayer's trade or business during the income year.
- "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.
- x) "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from other charges associated with

transportation such as baggage fees, sales of food and drink, pet crate rentals, etc.

- xi) "Arrivals" and "Departures" means the number of times that an aircraft lands or takes off at an airport in revenue service.
- xii) "Arrivals and departures in this State" means the number of times that an aircraft lands or takes off in revenue service at an airport located in this State.
- xiii) "Revenue" means gross sales or gross receipts, unless otherwise required by context.
- c) Apportionment of Business Income. The same method in the reporting of items for all factors must be consistent for both the numerator and denominator. For tax years beginning on or after January 1, 2009, the taxpayer shall apportion business income using only the sales factor.
- d) The Sales Factor. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year and the denominator of which is the total sales of the taxpaver within and without this state during the taxable year. The denominator is the transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc. Proceeds and net gains or losses from the sale of aircraft and passive income items, such as interest, rental income, and dividends, shall not be included in the denominator. The numerator of the sales factor is the total revenue of the taxpayer in the State during the income year. Airtime, arrivals, and departures by type of aircraft shall be used in computing revenue attributable to this State derived from hauling passengers, freight, and mail. Receipts from the other business activities shall be included in the numerator in accordance with the statute. In determining the numerator of the sales factor, revenue for hauling passengers, freight, mail, and excess baggage shall be attributed to this State using the "aircraft ready for flight" ratio, which is calculated as follows:
 - i) The ratio which the air miles of the taxpayer's aircraft flew in this State bears to the total air miles ramp to ramp of such aircraft everywhere by type of aircraft times the denominator cost or value of each type of aircraft, weighted at 40%.
 - ii) The ratio of arrivals and departures in this State bears to the total arrivals and departures everywhere by type of aircraft times the denominator cost or value of each type of aircraft, weighted at 60%.

If records of actual revenue by type of aircraft are not maintained, the total revenue shall be divided into passenger and freight (which shall include express, excess baggage and mail) revenue and allocated to aircraft type on the ratio of the revenue passenger ton-miles and revenue freight (which shall include express, excess baggage and mail) ton-miles of such type, respectively.

e) Alternative Methodologies. If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.